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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 WILMER A. TREJO-GAMEZ,

14 Defendant.

CASE NO. CR22-0061JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is *pro se* Defendant Wilmer A. Trejo-Gamez's motion for a
17 reduction in his sentence pursuant to 18 U.S.C. § 3582(c)(2) and (1) the retroactive
18 "zero-point offender" provision of Amendment 821 to the United States Sentencing
19 Guidelines (the "Guidelines") and (2) the "new Safety-Valve" amendment. (Mot. (Dkt.
20 # 48).) Plaintiff the United States of America (the "Government") opposes the motion.
21 (Resp. (Dkt. # 51).) The court has considered the motion, the parties' submissions, the
22

1 relevant portions of the record, and the governing law. Being fully advised, the court
2 DENIES Mr. Trejo-Gamez's motion.

3 II. BACKGROUND

4 In November 2022, Mr. Trejo-Gamez pleaded guilty to four counts of Distribution
5 of a Controlled Substance. (*See* PSR (Dkt. # 41 (sealed)) ¶ 2.) These charges were based
6 on Mr. Trejo-Gamez's sale of controlled substances to a confidential source on four
7 separate occasions. (*Id.* ¶¶ 8-9.) In the fourth transaction, Mr. Trejo-Gamez also sold
8 two guns to the confidential source. (*Id.* ¶ 9.) Shortly thereafter, Mr. Trejo-Gamez
9 arranged to sell an additional 10,000 fentanyl pills and two rifles to the source, but that
10 transaction did not take place. (*Id.* ¶ 10.) As part of the plea agreement, the parties
11 stipulated to a base offense level of 30, a two-level upward adjustment for possession of a
12 firearm in connection with the offense, and a three-level downward adjustment for
13 acceptance of responsibility. (*See* Plea Agr. (Dkt. # 37) ¶ 10.)

14 United States Probation and Pretrial Services ("Probation"), applying the 2021
15 version of the Guidelines, calculated Mr. Trejo-Gamez's total offense level as 29 in
16 accordance with the stipulations in the plea agreement. (*See* PSR ¶¶ 17-25.) Because
17 Mr. Trejo-Gamez had zero criminal history points, Probation calculated his criminal
18 history category as I. (*Id.* ¶ 29.) As a result, Probation determined that the Guidelines
19 sentencing range for Mr. Trejo-Gamez's offenses was 87 to 108 months. (*Id.* ¶ 55.)

20 At sentencing on March 9, 2023, the court adopted the presentence investigation
21 report without change. (*See* SOR (Dkt. # 52 (sealed)) at 1.) The court found Mr.
22 Trejo-Gamez's uncharged conduct, including the sale of firearms and the quantity of

1 illegal drugs involved, to be aggravating factors. (*Id.* at 3.) It found Mr. Trejo-Gamez’s
2 difficult childhood, which included abuse and neglect, to be a mitigating circumstance.
3 (*Id.*) The court imposed a below-Guidelines sentence of 72 months in custody, followed
4 by four years of supervised release. (*Id.* at 4; *see also* Judgment (Dkt. # 47) at 2.) Mr.
5 Trejo-Gamez’s projected release date is in May 2027. (*See* Resp. at 2.)

6 **III. ANALYSIS**

7 Mr. Trejo-Gamez argues that he is entitled to a reduction in sentence under
8 Amendment 821, Part B, which provides for a reduction in sentence for certain
9 “zero-point” offenders, and “the new Safety-Valve” amendment. (*See generally* Mot.)
10 The court concludes that neither entitles Mr. Trejo-Gamez to a reduction in his sentence.

11 **A. Zero-Point Offender**

12 Mr. Trejo-Gamez seeks a reduction in sentence under the “zero-point offender”
13 amendment to the Guidelines. (*See* Mot. at 1.) Section 4C1.1(a) of the 2023 Guidelines
14 sets out ten criteria that a defendant must satisfy in order to qualify for a zero-point
15 offender reduction. *See* U.S.S.G. §§ 4C1.1(a)(1)-(10). Here, because Mr. Trejo-Gamez
16 admitted that he sold 100 fentanyl pills and two handguns in the fourth charged
17 transaction, he does not meet the requirement that “the defendant did not possess, receive,
18 purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous
19 weapon (or induce another participant to do so) in connection with the offense.” (*See*
20 Plea Agr. ¶ 9.c); U.S.S.G. § 4C1.1(a)(7). As a result, he is ineligible for a zero-point
21 offender adjustment to his sentence.
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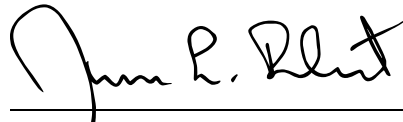
1 **B. “Safety Valve”**

2 Mr. Trejo-Gamez also seeks a reduction in sentence pursuant to “the new
3 Safety-Valve” amendment. (Mot. at 1.) As the Government points out, however, “there
4 is no retroactively applicable Safety-Valve amendment that would authorize the [c]ourt to
5 reduce [Mr.] Trejo-Gamez’ sentence.” (Resp. at 6 (citing U.S.S.G. § 5C1.2).) Mr.
6 Trejo-Gamez was not eligible for the Safety-Valve adjustment when he was sentenced
7 because he “possess[ed] a firearm or other dangerous weapon . . . in connection with the
8 offense” by selling firearms along with controlled substances. U.S.S.G. § 5C1.2(a)(2)
9 (2021 ed.) This requirement was not amended in the 2023 edition of the Guidelines. *See*
10 U.S.S.G. § 5C1.2(a)(2) (2023 ed.) Thus, the court is without authority to adjust Mr.
11 Trejo-Gamez’s sentence based on a purported “new Safety-Valve” amendment.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the court DENIES Mr. Trejo-Gamez’s motion for a
14 reduction in his sentence (Dkt. # 48).

15 Dated this 10th day of May, 2024.

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19 JAMES L. ROBART
20 United States District Judge
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